(1977) 03 AHC CK 0037

Allahabad High Court

Case No: C.M.W.P. No. 1 of 1975

MANNI LAL KEDIA — APPELLANT

Vs

COMMISSIONER OF INCOME TAX and Another — RESPONDENT

Date of Decision: March 23, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 154, 155

Citation: (1978) 7 CTR 294

Hon'ble Judges: Chandrashekhar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Chandrashekhar, J. - In this petition under Article 226 of the Constitution, the petitioner has prayed for quashing the order (Annexure-III) made by Income Tax Officer under S. 154 of the Income Tax Act, 1961 (hereinafter referred as the Act) and the order dated 10-9-1964 made by the Commissioner of Income Tax (hereinafter referred as the Commissioner) under S. 26A of the Act on a revision petition filed by the petitioner against the aforesaid order of the Income Tax Officer.

2. For the assessment year 1967-68 the Income Tax Officer had made an order assessing the income of the petitioner for that year. Subsequently the Income Tax Officer issued a notice to the petitioner under Ss. 154 and 155 of the Act asking the petitioner to show not be rectified. In that notice it was stated that one of the mistakes in the assessment order which was sought to be rectified was regarding not levying the surcharge. The petitioner neither sent any reply to the show cause notice nor appeared before the Income Tax Officer. The Income Tax Officer, by his order dated 11-10-1973, rectified his earlier order of assessment inter alia, by imposing a surcharge on unearned

income, which surcharge had not been imposed in the assessment order.

3. Feeling aggrieved by aforesaid rectification made by the Income Tax Officer the petitioner filed a revision petition before the Commissioner of Income Tax who by his order dated 16-3-1974, dismissed the revision. The Commissioner has observed, inter alia, as follows :-

"It was admitted that the income was unearned and as the assessee was a minor, during the year although he pleaded that the provisions u/s. 154 of the I.T. Act, was not applicable in this case."

4. In this petition Sri D. C. Chaturvedi, learned counsel for the petitioner contended that there was no mistake apparent on the face of the record of the Income Tax Officer which could justify his passing an order under S. 154 for levying additional surcharge on the alleged unearned income of the petitioner. In support of his contention Sri Chaturvedi relied on a decisions of the Supreme Court in I. S. Balram, I.T.O. vs. Volkart Brothers, and of the Bombay High Court in Aloo Investment Company Pvt. Ltd. vs. Union of India.

5. The aforesaid two decisions relied upon by Sri Chaturvedi have no application to the facts of the present case because the mistake sought to be rectified by the respective Income Tax Officers in those cases were of a different character from the error which the Income Tax Officer has rectified in present case.

6. Sri Chaturvedi disputed the assumption by the Income Tax Officer that the petitioner was a minor during the relevant assessment year and that the income derived by him was unearned income. There is no substance in this contention because the Commissioner has stated in his aforesaid order that it was admitted that the income in question was unearned as the petitioner was a minor during the relevant assessment year. It is too late in the day for Sri Chaturvedi to question the correctness of the statement in the order of the Commissioner.

7. Sri Chaturvedi did not dispute that in the assessment year 1967-68 unearned income of an assessee was liable for additional surcharge. As the Income Tax Officer has not levied such surcharge, presumably by oversight or inadvertent omission, such mistake was clearly apparent on the face of his record and he was competent to rectify such mistake under S. 154 of the Act.

8. We do not find any manifest error either in the impugned order of the Income Tax Officer or in the impugned order of the Commissioner.

9. In the result this petition fails and is dismissed with costs.